



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Medicine TITLE-SERIES: 11-12

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: 11-12 Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code § 30-3-7(a)(1) and §30-3-16(f)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 30-3-7(a)(1) and §30-3-16(f)

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/22/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/23/2018

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The Board publicized notice of this proposed rule change by: including a notice of the proposed amendments and comment period on the Board of Medicine website with a link to the proposed rule; publishing an article with a link to the proposed rule in the Board's newsletter which is provided to Board licensees; sending an email notification to licensees of the Board with a link to the proposed rule; and notifying the West Virginia Higher Education Policy Commission.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule implements the educational permit requirement for medical school graduates who are participating in residency or fellowship training in West Virginia. The rule establishes: an implementation schedule for the issuance of educational permits prior to July 1, 2019; the extent to which residents and fellows may practice medicine and surgery pursuant to an educational permit; criteria for the issuance of reciprocal educational permits for out of state allopathic medical residents seeking to complete a residency rotation in West Virginia; requirements for educational permits and the renewal of such permits, including eligibility criteria for renewal; criteria for when an educational permit application may be denied; grounds for permit suspension, revocation and other discipline; a fee schedule; and other criteria for the implementation of the educational permit process.

Section 2 sets forth applicable definitions

Section 3 identifies the requirements for all participants in West Virginia graduate medical education training and establishes that a participant must hold either a full medical license or an educational permit. This section also establishes the limitations of the permit, and that a permit will expire when a permit holder obtains a West Virginia medical license.

Section 4 sets forth the eligibility criteria, application process and fee for an educational permit.

Section 5 establishes the permit period and renewal process.

Section 6 identifies the obligations of an educational permit holder.

Section 7 sets forth permit denial, complaint and disciplinary procedures.

Section 8 identifies permit denial and disciplinary grounds.

Section 9 creates a process and eligibility criteria for reciprocal educational permits. These reciprocal permits would be issued to participants in residency training outside of West Virginia who wish to complete temporary rotations in West Virginia.

Section 10 establishes reporting obligations to the Board of Medicine by graduate medical education programs concerning the termination of medical education training contracts for permit holders.

As a result of the Boards receipt and review of comments, three modifications (two technical and one substantive) were incorporated into the agency approved rule: (1) of has been replaced with for to correct the name of the Accreditation Council for Graduate Medical Education in subdivision 2.1.1; (2) for uniformity and to correct a technical error, reciprocal residency permit has been replaced with reciprocal educational permit in subsection 9.3; and the proposed permit renewal requirements have been modified to eliminate the proposed requirement that the permit-holders Program Director verify that the permit holder is in good standing. The elimination of the good standing verification was incorporated in response to a comment received from the West Virginia Higher Education Policy Commission in conjunction with the graduate medical education programs at Charleston Area Medical Center, Marshall University School of Medicine and West Virginia University School of Medicine, and is in conformity with renewal requirements in many other states.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

House Bill 4027 was enacted in the 2018 regular session. This bill establishes a requirement that all participants in medical residency and fellowships in West Virginia hold a training permit issued by the West Virginia Board of Medicine. All residents and fellows must comply with this requirement by July 1, 2019, but the statute authorizes

the Board to promulgate emergency rules to implement the provisions of HB 4027 prior to that date.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Board anticipates that the impact of this rule upon the revenues of state government will be neutral. The proposed rule sets a permit fee of \$100. It is anticipated that the cost of implementing the educational permit by the Board will be equivalent to the revenue generated by the permit fee.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The Board does not anticipate that this rule will have an economic impact on the state or its residents. Participants in graduate medical training in West Virginia will be required to pay a \$100 permit fee.

C. FISCAL NOTE DETAIL:

Effect of Proposal

Fiscal Year

	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	49000	49000
Personal Services	0	22000	22000
Current Expenses	0	0	0
Repairs and Alterations	0	7000	7000
Assets	0	0	0
Other	0	20000	20000
2. Estimated Total Revenues	0	60000	60000

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Based upon the estimated average of 600 Resident Permits and 10 medical fellowship permits multiplied by \$100 (the cost of the permit, mirroring the osteopathic charges) we estimate an increase in revenue of \$60,000.00 annually.

The agency would need to hire at least a part time employee to assist in processing the new permits at 22k annually.

There will be a cost associated with data base design and maintenance in order to develop on-line applications. We estimate this cost to be \$20,000 initially and approximately \$3,500.00 maintenance each year thereafter. I have this listed in the "other" category above.

The Board will also need to purchase office equipment and supplies in order to accommodate the employee assigned to the project at an estimated cost of \$7,000.00.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jamie C Frame -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 11
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF MEDICINE

SERIES 12
PERMITTING AND DISCIPLINARY PROCEDURES: EDUCATIONAL
PERMITS FOR GRADUATE MEDICAL INTERNS, RESIDENTS AND FELLOWS

§11-12-1. General.

1.1. Scope. -- W. Va. Code § 30-3-7(1)(a) authorizes the Board of Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board, and W. Va. Code § 30-3-16(f) authorizes the Board to promulgate rules to implement this section of the West Virginia Medical Practice Act.

1.2. Authority. -- W. Va. Code § 30-3-7(a)(1) and §30-3-16(f).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

§11-12-2. Definitions.

2.1. For purposes of this rule, the following words and terms mean:

2.1.1. "ACGME" means the Accreditation Council for Graduate Medical Education.

2.1.2. "Board" means the West Virginia Board of Medicine, established in W. Va. Code §30-3-5.

2.1.3. "ECFMG" means the Educational Commission for Foreign Medical Graduates.

2.1.4. "Educational permit" means an authorization issued to a physician by the Board to practice medicine and surgery under the auspices of ACGME approved graduate medical training or a fellowship in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education.

2.1.5. "Fellowship" means a period of additional specialized training for a physician who has completed a specialty training program/residency which is sponsored by an institution that is accredited to provide graduate medical education.

2.1.6. "Good standing" means that a participant in graduate medical training is not under suspension or otherwise prohibited from current participation in his or her training program.

2.1.7. "Graduate medical training" means formal medical training pursued after the receipt of a medical degree and includes internship, residency and fellowship programs.

2.1.8. "LCME" means the Liaison Committee on Medical Education.

2.1.9. “Program Director” means the director of an accredited or approved graduate medical education training program.

2.1.10. “Reciprocal educational permit” means an authorization issued to a physician by the Board to practice medicine and surgery under the auspices of ACGME approved graduate medical training domiciled outside of West Virginia during a temporary residency rotation within West Virginia.

§11-12-3. Permit Required for Participation in Graduate Medical Training.

3.1. Beginning July 1, 2019, no person shall participate in a program of graduate medical education training in West Virginia unless he or she:

3.1.1. Holds a license to practice medicine and surgery in this state issued by the Board pursuant to W. Va. Code § 30-3-10; or

3.1.2. Holds an educational permit or reciprocal educational permit issued by the Board pursuant to W. Va. Code § 30-3-16 and this rule.

3.2. An educational permit authorizes the holder to participate in:

3.2.1. An ACGME approved training program; or

3.2.2. A fellowship in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education.

3.3. An educational permit holder may only practice medicine and surgery within the auspices of his or her training program. If a permit holder leaves the training program for which an educational permit was issued, the permit becomes invalid.

3.4. An educational permit is not a license to practice medicine and surgery in West Virginia, and an educational permit holder may not practice medicine and surgery outside the scope of his or her training program or fellowship.

3.5. Receipt of an educational permit does not entitle an applicant to receive a license to practice medicine and surgery in West Virginia upon completion of graduate medical training or any portion thereof. An individual who seeks to be licensed to practice medicine and surgery must apply and meet the qualifications and criteria for licensure set forth in W. Va. Code § 30-3-10 and 11 CSR 1A.

3.6. A permit holder may apply for a medical license when he or she becomes eligible. In the event that a West Virginia medical license is granted to the holder of an educational permit, the permit shall expire upon licensure.

3.7. The Board shall begin issuing educational permits to qualified applicants on October 1, 2018.

3.8. Reciprocal educational permits shall be issued beginning July 1, 2019.

§11-12-4. Educational Permit Eligibility and Application.

4.1. Minimum qualifications for receipt of an educational permit are set forth in West Virginia Code §30-3-16.

4.2. An application for an educational permit to participate in graduate medical training shall be completed on a Board-approved application.

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4.3. The Board will not consider an application or decide upon the issuance of a permit to an applicant until the complete application, including all third-party documentation and/or verification, is on file with the Board and the Board has had at least fifteen business days to review the application.

4.4. An application for an educational permit must be accompanied by payment of a nonrefundable application fee in an amount established by 11 CSR 4. Until such time as 11 CSR 4 is modified to reflect a fee for permits, the fee shall be \$100.

4.5. Applicants must provide the following information in association with an application for an educational permit:

4.5.1. The applicant's legal name, e-mail address, home address, preferred mailing address and telephone numbers;

4.5.2. Demographic information of the applicant, such as date of birth, place of birth, sex, etc.;

4.5.3. Satisfactory proof that prior to commencing graduate medical training pursuant to a permit issued by the Board, the applicant:

4.5.3.a. Is a graduate of an allopathic medical school approved by the LCME;

4.5.3.b. Is a graduate of a medical college that meets the requirements for certification by the ECFMG; or

4.5.3.c. Has completed an alternate pathway for initial entry or transfer requirements by the ACGME.

4.5.4. Primary source verification from the Program Director of the proposed graduate medical training, or his or her designee, that the applicant:

4.5.4.a. Is under contract as a resident in a program of post-graduate clinical training approved by the ACGME; or

4.5.4.b. Has completed an ACGME-approved residency program or a residency program recognized by the ECFMG and is under contract as a fellow in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education.

4.5.5. Satisfactory proof of legal name, identity and date of birth;

4.5.6. A copy of legal documentation satisfactory to the Board which verifies any name change the applicant has experienced;

4.6. Board staff is authorized to issue permits without presentation to the Board if the application is complete and there is no derogatory or conflicting information regarding an applicant's qualifications and eligibility for a permit.

4.7. If Board staff receives or discovers derogatory or conflicting information regarding an applicant's qualifications or eligibility for an educational permit, the information may be presented to the Board for review.

4.8. A complete application, including all associated documentation submitted to the Board, becomes the property of the Board and will not be returned.

4.9. The applicant has the burden of demonstrating that he or she is qualified to receive an educational permit.

§11-12-5. Permit Renewal.

5.1. An educational permit is valid for a period of up to one year and, except as otherwise provided in this rule, expires on the last day of June following the issuance date of the permit.

5.2. An educational permit may be renewed annually during the renewal period established by the Board if the permit holder remains eligible to receive a permit.

5.3. An educational permit holder may renew a permit by:

5.3.1. Completing and submitting the Board's renewal application;

5.3.2. Having the applicant's Program Director to submit verification that the applicant remains under contract as set forth in subdivision 4.5.4. of this rule; and

5.3.3. Submitting a nonrefundable renewal fee in the amount of \$100.

5.4. Communications and notifications regarding the permit renewal process will be provided to the permit holder via e-mail. Failure of the permit holder to receive a renewal notification does not justify participation in graduate medical training without a valid educational permit.

§11-12-6. Permit Requirements.

6.1. An educational permit holder shall maintain current contact information on file with the Board including: a preferred mailing address; a home address; and a current e-mail address. He or she shall notify the Board of any changes to such contact information, and any legal name change, within fifteen days of the change.

6.2. If an educational permit holder leaves his or her training program at any time other than the end of the training contract, he or she shall notify the Board, in writing, within five business days. Such notice must provide an explanation of the facts and circumstances surrounding the cessation of training.

6.3. Prior to prescribing any controlled substances pursuant to an educational permit issued pursuant to section 4 of this rule, a permit holder shall complete of a minimum of three hours of drug diversion training and best practice prescribing of controlled substances training through a Board approved course. The Board shall maintain a list of approved courses on its website.

§11-12-7. Permit Denial, Complaint and Disciplinary Procedures.

7.1. The application denial, complaint and disciplinary process and procedures and appeal rights set forth in the contested case hearing procedure, W. Va. Code §29A-5-1 et seq., W. Va. Code §30-3-14(h) and (i), and in the Board's procedural rule, 11 CSR 3, Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedure, also apply to educational permit holders.

7.2. If the Board determines the evidence in its possession indicates that an educational permit holder's continuation in practice or unrestricted practice as part of a graduate medical training program constitutes an immediate danger to the public, the Board may take any of the actions provided in W. Va. Code §30-3-14(j) on a temporary basis and without a hearing if institution of proceedings for a hearing

before the Board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The Board shall render its decision within five days of the conclusion of a hearing under this subsection.

§11-12-8. Denial of Permit and Discipline.

8.1. If an educational permit applicant or holder is found guilty of, or pleads guilty or nolo contendere to, any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance for other than generally accepted therapeutic purposes under state or federal law and in a state or federal court of competent jurisdiction, the Board shall deny the permit application or revoke the physician's permit without resort to the procedures set forth in section 8 of this rule. A certified copy of the guilty verdict or plea rendered is sufficient proof for permit denial or revocation.

8.2. The Board shall deny an application for an educational permit if the applicant:

8.2.1. Is ineligible based upon the criteria set forth in W. Va. Code § 30-3-16 or this rule;

8.2.2. Has ever held a license to practice medicine and surgery in West Virginia; or

8.2.3. Has ever had an educational permit or a license to practice medicine and surgery revoked, suspended or surrendered in any jurisdiction unless such action is no longer in effect and the authorization to practice has been restored.

8.3. The Board may deny an application for an educational permit and/or may discipline a permit holder who, after a hearing, has been adjudged by the Board as unqualified due to any of the following reasons:

8.3.1. Conduct by a permit holder which is equivalent to any of the grounds cited for the discipline in W. Va. Code §30-3-14(c) or section 12 of the Board's rule 11 CSR 1A;

8.3.2. Failure to comply with any portion of this rule;

8.3.3. Practicing medicine or surgery outside of or beyond the scope of the permit holder's graduate medical training program; or

8.3.4. Prescribing any controlled substance to or for himself or herself, his or her spouse, or for any other member of his or her immediate family including parents, siblings, children and their spouses.

8.4. If the Board determines that a physician is unqualified to hold an educational permit, the Board may enter an order denying an application or imposing any limitation, restriction or other disciplinary measure set forth in W. Va. Code §30-3-14(j) and/or 11 CSR 1A.

§11-12-9. Reciprocal Educational Permit Eligibility and Application.

9.1. A participant in ACGME-approved medical residency program outside of West Virginia who holds an educational permit, current license or other authorization to practice medicine and surgery in the state where the residency program is domiciled and who seeks to participate in a temporary residency rotation within West Virginia shall, at least thirty days in advance of the rotation, apply for a reciprocal educational permit from the Board.

9.2. Pursuant to a reciprocal educational permit, a physician's practice is limited to the location and scope of his or her temporary West Virginia residency rotation.

9.3. A reciprocal educational permit shall be limited to a period of sixty concurrent days and is nonrenewable. The Board may issue a reciprocal educational permit to a physician once each academic year.

9.4. Applicants must provide the following information in association with an application for a reciprocal educational permit:

9.4.1. The applicant's legal name, e-mail address, home address, preferred mailing address and telephone numbers;

9.4.2. Demographic information of the applicant, such as date of birth, place of birth, sex, etc.;

9.4.3. Satisfactory proof that the applicant holds the appropriate authorization to practice medicine and surgery in the state where the applicant's residency program is domiciled;

9.4.4. Primary source verification from the program director of the proposed graduate medical training, or his or her designee, which establishes:

9.4.4.a. The applicant is under contract as a resident in a program of post-graduate clinical training approved by the ACGME;

9.4.4.b. The applicant is in good standing with the residency program; and

9.4.4.c. The dates the applicant is scheduled to participate in a temporary residency rotation in West Virginia and the location of the training; and

9.4.5. An application fee of \$50.

§11-12-10. Required Reports from Graduate Medical Education Programs.

10.1. Every graduate medical education program providing graduate medical education to residents or fellows in West Virginia shall notify the Board within five days of the termination of any graduate medical education contract with a physician who holds an educational permit issued by the Board.